



Final Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-90-264
Regulation title	Methods and Standards for Establishing Payment Rates – Long Term Care
Action title	Reimbursement for NF Specialized Care Ancillary Services
Document preparation date	

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apr.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Under existing regulations, DMAS reimburses reasonable costs without limit for covered specialized care ancillary services, except kinetic therapy devices. In response to both the escalating costs and the need for greater consistency in charges submitted for these services, this proposed regulation places a ceiling on ancillary services reimbursement to no more than 150% of average specialized care ancillary costs. The ceiling will be adjusted annually for inflation.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

I hereby approve the foregoing Agency Background Document with the attached amended State Plan pages, Methods and Standards for Establishing Payment Rates – Long Term Care: Reimbursement for NF Specialized Care Ancillary Services (12 VAC 30-90-264), and adopt the action stated therein. I certify that this final regulatory action has completed all the requirements of the Code of Virginia § 2.2-4012, of the Administrative Process Act and is full, true, and correctly dated.

Date

Patrick W. Finnerty, Director

Dept. of Medical Assistance Services

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Code of Virginia (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act [42 U.S.C. 1396a] provides governing authority for payments for services.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this action is to implement a reasonable limit on the reimbursement for specialized care ancillary services. Over the past several years, specialized care ancillary service costs have markedly increased and wide variation in costs among facilities have been observed. The wide variation does not appear to correspond to differing levels of severity among specialized care populations and do not always appear to be associated with the severity of the patient's needs. This action will essential to public health and the welfare of the most vulnerable of the Commonwealth's citizens in that it is designed to ensure that Medicaid recipients continue to receive appropriate specialized care ancillary services in an efficient manner while maintaining adequate reimbursement.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

DMAS determined that the appropriate ceiling for specialized ancillary care services is \$238.81 per day for calendar year 2004. This ceiling is 150% of average ancillary costs in provider fiscal year 2003 inflated to calendar year 2004. The regulation also provides for a mechanism to inflate the ceiling to the provider fiscal year using an indexing methodology similar to that used for regular nursing home reimbursement. The specific change is found in 12 VAC 30-90-264(8)(a), and consists in adding the following language:

Effective for specialized care days on or after July 1, 2006 reimbursement for reasonable costs shall be subject to a ceiling. The ceiling shall be \$238.81 per day for calendar year 2004 (150% of average costs) and shall be inflated to the appropriate provider fiscal year. For cost report years beginning in each calendar year, ancillary ceilings will be inflated using the moving average for the second quarter of the year, taken from the Virginia Specific Nursing Home Input Price Index published by Global Insight or its successor for the fourth quarter of the previous year.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage to the Commonwealth and to the agency is that this change in regulations addresses the increased and wide variation in ancillary costs among specialized facilities. This action provides a reimbursement methodology similar to other long-term care payment methodologies by evaluating per diem rates among the facilities providing services to specialized care residents statewide and calculating a statewide ceiling equal to 1.5 times the average ancillary cost. A ceiling that is 150% of the average costs is designed to ensure that Medicaid recipients continue to receive appropriate specialized care ancillary services in an efficient manner while maintaining adequate reimbursement. There are no disadvantages to the agency, the public, or to the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

There were no changes between the Proposed Regulation and the Final Regulation.

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

DMAS' proposed regulations were published in the July 24, 2006, *Virginia Register* (22:23 V.A.R.) for their public comment period from July 24, 2006 through September 22, 2006. No comments were received.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC30-90-264(8)(a)		Reimburses all reasonable ancillary costs.	Adds language to implement a ceiling on the reimbursement for specialized care ancillary services of 150% of average costs for these services. Also describes the yearly adjustment for inflation.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This regulation has no impact on recipients or their families. These changes do not strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; strengthen or erode the marital commitment; or increase or decrease disposable family income.

This regulation affects the reimbursement rates paid for specialized care ancillary services. This change alone would not be expected to affect recipients or their families in any appreciable way.